IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1029 of 1988

with

SPECIAL CRIMINAL APPLICATION No 44 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANJULABEN SHANKERLAL

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1029 of 1988
   MR AD SHAH for Petitioner
   MR UA TRIVEDI APP for Respondent No. 1
   MR PK JANI for Respondent No. 2

2. Special Criminal ApplicationNo 44 of 1989
   MR SI NANAVATI for Petitioner
   MR UA TRIVEDI, APP for Respondent No. 1
   NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/02/2000

ORAL JUDGEMENT

#. These two Special Criminal Applications arise out of an FIR registered by C.I.D. Crime Branch, Gandhinagar Zone Unit vide C.R. No. 40/88 against the present petitioners along with one Shri K.M.Pandya, retired Chief Examiner of Documents, C.I.D. (Gujarat State), Ahmedabad (now deceased) for the offences punishable under sections 170, 467, 471 and 114 of Indian Penal Code.

#. Reliefs sought by the petitioners are that the First Information Report lodged against them vide CR No. 40/88 on 19th May, 1988 by Police Inspector, C.I.D. Crime, Gandhinagar Zone Unit, be directed to be quashed and set aside and the Police Inspector, C.I.D. Crime, Ahmedabad, may further be directed to hand over the original partnership retirement deed to the Investigating Agency of Mehsana Police in relation to Police Inquiry No. 26/88.

#. The facts leading to these petitions can be stated in brief as under.

3.1 The petitioner in Special Criminal Application No. 1029/88 Manjulaben Snakerlal,was a partner in a firm known as Swastik Apartment at Mehsana. According to her, she had 0.35 ps. share in the business. On the basis of that partnership deed, she had preferred a suit in the court of Civil Judge at Mehsana. Another partner Kantilal Parsottamdas Patel had a different case. According to him, Manjulaben Shankerlal, formerly, was a partner formerly in the firm, but then, there was dissolution of the partnership and she had retired from the firm. For that purpose, a document was executed by her and Rs. 1,17,000/- were paid to her by Kantilal Parsottamdas Patel. Ultimately, that dispute came to be resolved between the parties and the matter which was carried to the High Court was withdrawn on 25th October, 1985. Subsequently, Manjulaben Shankerlal preferred a suit in the court of Civil Judge at Mehsana being Civil Suit No. 111/88 and she also lodged a complaint against Kantilal Parsottamdas Patel and his son for the offences punishable under sections 471, 474, 175(2), 465, 478, 196, 209 and 120 of Indian Penal Code. In the latter suit, Manjulaben produced a report from a handwriting expert Mr. K.M.Pandya, who signed the report as Chief

Examiner of Documents, C.I.D. (Gujarat State), Ahmedabad indicating that the signature of Manjulaben appearing in the dissolution deed/retirement deed was forged. It transpires that in order to ascertain the genuineness of the document, Kantilal Parsottamdas Patel approached the office of the Chief Examiner of Documents to learn that Mr. K.M.Pandya had retired long back. On the basis of an application made by Kantilal Parsottamdas Patel to that office which was forwarded to C.I.D. Crime, officers of C.I.D. Crime approached Kantilal Parsottamdas Patel at Mehsana and recorded his FIR. That FIR is registered and being aggrieved by that FIR lodged by Kantilal Parsottamdas Patel, the present petitioners have approached this Court for the reliefs stated above.

#. It transpires from the FIR that along with K.M.Pandya and Manjulaben S. Patel, one Maheshbhai N. Trivedi has also been indicated as an accused. It is not in dispute that Maheshbhai N. Trivedi is a practising advocate who represented Manjulaben in the suit and produced the document, namely, opinion/report of the handwriting expert Mr. K.M.Pandya.

#. Mr. Shah, learned advocate appearing for accused no.3 Manjulaben, petitioner in Special Criminal Application No. 1029/88, submitted that the complaint does not disclose any ingredients of a cognizable offence qua the petitioner Manjulaben. There is as such, nothing against Mr. K.M.Pandya as well. All that appears to have been done by Mr. Pandya is that he has used a rubber stamp which he used to use earlier while in service and has forgotten to mention that he is an Ex-Chief Examiner of Documents or that he is a retired Chief Examiner of Document. There is no dispute that the document is prepared by him, that it is signed by him and as such, there is no impersonation. Mr. Shah submitted that offence punishable under section 465 of Indian Penal Code is not cognizable and therefore, section 471 though cognizable would be rendered incognizable. Mr. Shah submitted that this FIR is lodged only with a view to dodge the suit filed by Manjulaben or to dodge the complaint filed by her subsequently. This is very clearly reflected from the tenor and contents of the FIR. Mr. Shah has placed reliance on the following decisions.

(1) Manindra Kumar Bose v. Santi Rani Biswas & others, AIR 1951 Cal.518.
(2) Motisinh Gambhirsinh vs. The State AIR 1961 Guj. 117,
(3) State of Haryana and others v. Ch. Bhajanlal an

dothers, AIR 1992 SC 604.

(4) State of West Bengal and others. v. Swapan Kumar Guha and others AND State of WEst Bengal and others v. Sanchaita Investments and others, AIR 1982 SC 949

He submitted that the FIR lodged against the petitioner Manjulaben may be quashed.

#. Mr. S.A. Mehta, learned advocate appearing for the petitioner in Special Criminal Application No. 44/89 original accused No. 2 in the FIR in question submitted that the FIR is lodged after the lapse of about 4 years. The FIR is a counterblast to the complaint and the suit filed by Manjulaben - accused No.3. This is reflected in the FIR and therefore, this is a malicious FIR. Mr. Mehta submitted that the petitioner - Maheshbhai N. Trivedi is a practising advocate. He has placed on record the document in question as an advocate, and therefore, it was a professional duty that he has performed for which he cannot be prosecuted. Mr. Mehta submitted further that there is not an iota of allegation against the present petitioner and therefore, no mens rea is alleged. He therefore urged that FIR qua the accused No.2 - Maheshbhai N. Trivedi may be quashed by allowing his petition.

#. Learned Additional Public Prosecutor Mr. U.A. Trivedi has opposed both the petitions vehemently. He has drawn the attention of this Court to the fact that Mr. K.M. Pandya has tried to impersonate and assume the colour of office of Chief Examiner of Documents, C.I.D. (Gujarat State), Ahmedabad by using the rubber stamp while signing a document. He submitted that prima facie he has committed an offence under section 170 of Indian Penal Code which is a cognizable offence. According to Mr. Trivedi, the document was obtained by Manjulaben from Mr. K.M. Pandya and the knowledge on her part can be presumed about Mr. Pandya not being the Chief Examiner of Documents. Manjulaben has still used the document signed by Mr. K.M.Pandya as Chief Examiner of Documents, which would reflect the mens rea on her part. Mr. Trivedi has drawn the attention of this Court to sections 463 and 464 of Indian Penal Code to indicate that, the document in question namely, opinion given by Mr. K.M. Pandya prima facie can be said to be a forged document. He submitted that the petitioners have approached this Court when the investigation has not even begun. He submitted that it is an attempt to throttle the investigation. He submitted that if the petitioners

are innocent and if they are found to be so at the end of the investigation, there is no question of them being chargesheeted. He submitted that the FIR discloses the ingredients of the offence and therefore, it may not be quashed. He submitted that the officers of C.I.D. Crime Branch have acted on motion by the office of Chief Examiner of Documents, which in turn had moved at the instance of Kantilal Parsottamdas Patel respondent No.2 herein and therefore, there is no question of any malice or malafides. No malafide is alleged in the petition against the Investigating Officer. There is no allegation of any dispute or bad blood between the petitioners and the Investigating Officer and therefore, at this initial stage of investigation, the FIR may not be quashed.

#. Mr. S.R.Shah, learned advocate appearing for respondent No. 2 - original complainant has also opposed these petitions. He submitted that the C.I.D. Crime Branch has acted on motion by Chief Examiner of Documents and as such, it cannot be said that it acted without jurisdiction or with malice. He has otherwise adopted the arguments advanced by Mr.Trivedi, learned APP.

#. In order to decide the question whether the FIR needs to be quashed or not, and before concentrating on the facts, the position of law as stated in this record by various decisions of the Apex Court may be taken into consideration.

In the case of State of Bengal & others v. Swapan Kumar Guha and others reported in AIR 1982 SC 949, the question posed before the Apex Court was the nature and scope of proceeding under Article 226 of the Constitution of India wherein, it has been observed that "the First Information Report which does not allege or disclose that the essential requirements of the penal provision are prima facie satisfied, it cannot form the foundation or constitute the starting point of a lawful investigation".

9.1 It is further observed in the same decision as under.

"The condition precedent to the commencement of the investigation under section 157 of the Code is that FIR must disclose, prima facie, that cognizable offence has been committed. It is wrong to suppose that the Police have an unfettered discretion to commence investigation

> under section 157 of the Code. Their right to inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and cannot, reasonably, have reason to suspect unless the FIR, prima facie, discloses commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation for to do so would be to trench upon the lawful power of police to investigate into the cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of an information as laid or received. The power to investigate into the cognizable offences must, therefore, be exercised directly on the condition on which it is granted by the Code."

9.2 In the case of State of Haryana and others v. Ch. Bhajanlal an dothers, reported in 1992 SC P. 604, the very question was again examined by the Apex Court. The Apex Court laid down certain criteria and categories wherein, the High Court may exercise powers under Article 226 of the Constitution of India or under section 482 of the Code of Criminal Procedure and interfere with the proceedings relating to the cognizable offence to prevent the abuse of process of any court or otherwise to secure the ends of justice. While laying down 7 categories in para 108, it has been stated that such power should be exercised sparingly. The categories which are stated include cases where the allegation in the FIR and other materials, if any, accommpanying the FIR do not disclose a cognizable offence, justifying the investigation by police officers under section 156(1) of the Code except under an order of a Magistrate within the purview of section 155(2) of the Code. The list also includes the cases, where the allegations made in the FIR or the complaint even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused.

##. With this legal proposition, now, the Court has to examine whether the present case would fall in a category which would call for interference in the investigation at the hands of this Court in exercise of powers under Article 226 of the Constitution of India or whether it is shown that the FIR does not disclose, even prima facie, the ingredients of the offence alleged to have been committed by the accused persons namely, the petitioners.

##. If the FIR is perused, it states the facts as to how the complainant and Manjulaben were partners in Swastik Apartment, how the partnership was dissolved and how there was a dispute which was settled at the High Court level on 25th October, 1985. Then, it states that Manjulaben obtained the certificate from Mr. K.M. Pandya, produced the same in the court through her advocate which was not accepted by the court and how it was revealed to the complainant through the informant that Mr. K.M. Pandya has retired long back although he has signed in capacity as Chief Examiner of Documents. It is then contended that Manjulaben has preferred a suit on the basis of that document and has also preferred a complaint. Then, it is averred that Mr. Pandya, though he was not in the public office, has given an opinion to Manjulaben Patel, as if he was in office. This was done by him to facilitate the use of a forged document to facilitate Manjulaben obtain a favourable order and therefore, proper action may be taken against him.

##. If the contents of the FIR and the tenor of the FIR as a whole is seen, it is amply clear that there is not an iota of allegation against the accused No.2 - the petitioner in Special Criminal Application No. 44/89. All that is stated against him is that the document was produced by Manjulaben through him, he being her advocate and in the absence of any allegation against him, the FIR against accused No.2 deserves to be quashed. There is no reason for him to remain under hanging sword under the investigation till the investigating officer completes the investigation and lodges appropriate report.

##. So far as Manjulaben is concerned, it is amply clear from the reading of FIR that there is no allegation against her. Also, there is nothing to indicate that she had intentionally obtained the report from Mr. K.M. Pandya. There is nothing to indicate the knowledge on her part that Mr. Pandya has signed this document as Chief Examiner of Documents. There is nothing to indicate that the document was obtained by her with the object of using that forged document for her benefit. This Court, at this stage, does not express any opinion about the document signed by Mr. Pandya as being forged or otherwise, but undisputedly, the document is signed by Mr. Pandya as Mr. Pandya. The allegation is that he has used the rubber stamp of Chief Examiner of Documents, C.I.D. (Gujarat State), Ahmedabad and therefore, at this stage, no opinion is expressed by this Court as to the conclusions or interpretation.

##. It is however, amply clear that in the absence of

any averment or allegation against the petitioners involving them in cognizable offences, the FIR qua them deserves to be quashed. The only offence that is shown to be cognizable by the learned APP is an offence under section 170 of Indian Penal Code and if that provision is read, it can be used only against Mr. Pandya and not against either Manjulaben or Maheshbhai N. Trivedi, the petitioners. In this view of the matter, this Court is inclined to entertain these petitions by quashing the FIR in question qua the petitioners only.

##. Both the petitions are therefore allowed. The FIR being CR No. 40/88 registered with the C.I.D. Crime Branch, Gandhinagar Zone Unitstands quashed, qua the petitioners. Rule is made absolute accordingly. The interim reliefs granted in both the petitions stand vacated.

[A.L.DAVE, J.]

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